

### IOWA

**Topics:**

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### HOW THE STATE CAN REMOVE CUSTODY

Statute: §§232.111; 232.116<sup>1</sup>

Grounds: Abandonment or extreme parental disinterest, abuse/neglect, mental illness or deficiency, alcohol or drug induced incapacity, felony conviction/incarceration, failure of reasonable efforts, sexual abuse, abuse/neglect or loss of rights of another child, failure to maintain contact, failure to provide support, child judged in need of services/dependent, child's best interest, child in care 15 of 22 months (or less), felony assault of child or sibling, murder/manslaughter of sibling child, voluntary relinquishment, imminent danger to the child, aggravated circumstances.

Exceptions: County attorney not required to file if: State 1) at option of agency or by order of court, child is being cared for by relative; 2) agency has documented a compelling reason why TPR is not in best interest of child – compelling reasons include, but are not limited to, reasonable likelihood that completion of services will make it possible for child to safely remain home or return home within 6 months; 3) agency has not provided family services it deems necessary for safe return of child, and the limited extension of time necessary to complete services is clearly documented in case permanency plan. Requires that court orders contain notice of possible TPR; provides that failure of respondents to request needed services will preclude them from raising the issue in a TPR proceeding.

### WHAT THE LAW SAYS ABOUT SEPARATING A MOTHER FORM HER BABY

It appears pursuant to state law that upon the birth of her child, the foster teen possesses legal custody to the extent she has the right to bring legal proceedings on her newborn's behalf. I.C.A. § 252K.302 (Action by minor parent) sets forth that a minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child. Attorneys

<sup>1</sup> National Center for State Courts' Knowledge and Information Services.

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and judges can ensure that teen parents are not forced to sign a voluntary placement agreement. The agreement can have dire consequences for a young mom in care who wishes to keep her baby after emancipation.<sup>2</sup> Foster teen moms may need a chance to “catch their breath” after their baby’s birth. The alternative of temporary foster care is available through the state and services that have the foster teen sign a voluntary agreement to hand over custody for a limited time. When the separation is over and the foster teen is ready to resume responsibility for childcare, the infant is returned to her pursuant to the terms of the temporary foster care contract she signed. The foster teen should obtain legal counsel to assist and advise as to the temporary foster care alternative.

If young parents are to assume daily responsibility for the care of their children after discharge, they must be allowed to practice that responsibility while in foster care.<sup>3</sup> Ensuring that the young mother and her child are placed together is a primary responsibility of the ward’s attorney. Reports and anecdotal evidence suggest that local child welfare systems do not have enough mother/child placements to meet the population’s needs.<sup>4</sup> The separation of mother and infant is damaging to both. The baby is left alone in the hospital for the entire night and portions of the day, precluding breastfeeding and crucial bonding with the mother. The state, in turn, pays an enormous price to keep a healthy child in the hospital. Such separations are counterproductive and inhumane. They are also illegal. Attorneys for parenting wards can address this problem from several angles. First, in some cases, steps may be taken while the ward is pregnant to ensure that the relevant agency is making appropriate plans for the client’s post-pregnancy placement. Next, when a client is illegally separated from her child, attorneys have several options. In most states, the parent may file a writ of habeas corpus against the child welfare or foster care agency, demanding that the child be returned to the mother. In some circumstances, an attorney’s threat to

<sup>2</sup> <http://www.jrplaw.org/Documents/Teens%20Aging%20Out%20of%20Foster%20Care%20in%20Oregon.pdf>

<sup>3</sup> “The Legal Status of Pregnant and Parenting Youth in Foster Care” (See article @ [http://64.233.167.104/search?q=cache:GDLCdv7\\_FaUJ:www.kidscounsel.org/Legal%2520Status%2520Preg-Parent%2520Youth%2520Foster%2520Care.doc+%22TEEN+mother%22+%22joint+placement%22+%22foster+CARE%22&hl=en&ct=clnk&cd=5&gl=us](http://64.233.167.104/search?q=cache:GDLCdv7_FaUJ:www.kidscounsel.org/Legal%2520Status%2520Preg-Parent%2520Youth%2520Foster%2520Care.doc+%22TEEN+mother%22+%22joint+placement%22+%22foster+CARE%22&hl=en&ct=clnk&cd=5&gl=us))

<sup>4</sup> In Illinois, the lack of appropriate placements too often results in postnatal stays in temporary shelters. In California, the legislature has officially acknowledged that the dearth of placements results in temporary separations of parenting wards and their children. In New York, the scarcity of mother/child beds often results in the mother and infant remaining in the hospital long after they are medically ready for discharge. In other instances, the mother is discharged to her prior placement while her baby remains in the hospital nursery. In New York City, as in other locales, this is difficult at best because mother/child placements are awarded on a first-come, first-served basis. Additionally, due to the higher demand for beds and the high cost of leaving beds vacant, programs are unable to reserve beds for pregnant teens. Nevertheless, advocates can seek court orders directing the ward’s agency to make appropriate plans for the teen’s placement following delivery.

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initiate such action will be sufficient to motivate the agency to reunite mother and child in an appropriate placement. Another option is to seek relief from a court with jurisdiction over the teen's foster care placement. The attorney should avail herself of state policies, such as those discussed above, to argue that the ward has a right to placement with her child.<sup>5</sup> Finally, in negotiating with state or local bureaucrats, advocates should point out that as long as the parenting ward retains legal custody of the infant, failure to place the mother and child together will compromise the state's ability to receive federal reimbursement for the infant's care.

## APPLICABLE STATE LAW

There is much Iowa appellate caselaw to suggest that the teen mom's status as her child's natural parent is not a surefire shield against termination. Youth and disinterest mattered as much as biology in *In Interest of C. K.*, 315 N.W.2d 37 (Iowa 1982) where the termination of the parental rights of parents who were 17 and 22 years of age when the child was born and who ultimately signed a release of custody, was deemed in the best interests of the child under the circumstances. The young parents' marital and financial condition was shaky, the child had been cared for almost exclusively by persons other than its parents, neither parent expressed a desire to be a full-time parent, the mother treated the child more like a doll than her own child, the father's interest in obtaining custody was motivated more by a desire to please the mother than to reestablish a parent-child relationship and the prospective adoptive parents were already providing the child with an excellent home. I.C.A. § 600A.4, subd. 4.

However the foster teen at minimum has the right to have been duly notified of any termination hearing. In *Alsager v. District Court of Polk County, Iowa* (Juvenile Division) 406 F.Supp. 10 (D.C.Iowa 1975) the court held that the Iowa parental termination statutes were unconstitutionally vague both on their face and as applied, that the parents were deprived of substantive due process by failure of state authorities to show a 'high and substantial degree of harm' to the children, and that the parents were denied procedural due process when they were given inadequate notice of the termination proceeding and a standard of proof was employed requiring a mere preponderance of the evidence.

Beyond the potential constitutional dimensions/statutory challenges that may be inherent to the foster teen's individual situation, the teen mom (and her attorney) should have in mind certain additional factors

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<sup>5</sup> For example, attorneys in California can now argue that the court or the agency has failed to make diligent and active efforts to place "the minor parent and the child together in as family-like a setting as possible" as mandated by state statute. In all jurisdictions, the attorney should also argue that separating the ward from her child is clearly contrary to the ward's best interest

when appealing a termination order or when attempting to have custody returned to the teen mom. For example, in *In re L.P.*, 2006 WL 2265258 (Iowa.App. 2006) termination of the mother's parental rights was found not to be in the child's best interests even though the mother lacked a driver's license, had unpaid fines, and lost her job after making the poor choice to visit an area without a dependable way to return home; the primary service provider expressed no concerns about the mother's parenting skills and stated that mother had been doing a "great job," incident in which child wandered toward street during supervised visit at park was an isolated occurrence, and the mother had not engaged in drug use during pendency of action. I.C.A. § 232.116(1)(h)(4). In *In re J.L.S.*, 720 N.W.2d 193 (Iowa.App. 2006) the appeals court deemed that sufficient "reasonable efforts" were not made to reunify the children with their parent prior to the hearing to terminate that parent's rights. The general rule is that the child welfare agency is required to make such "reasonable efforts" at reunification prior to having the parental rights in question adjudicated terminated, and the case of the foster teen mom and her newborn does not appear to be a clear cut exception.

## RESOURCES

### CHILD WELFARE AGENCY: **Department of Human Services**

1900 Carpenter Des Moines, IA 50314

Phone: 515-286-3555

<http://www.dhs.iowa.gov/>

### **Iowa Legal Aid**

1111 Ninth Street Suite 230 Des Moines, IA 50314

Phone: 800-532-1275

[www.iowalegalaid.org](http://www.iowalegalaid.org)

The **Teen Parents and the Law (TPAL) program** is based on a national teen court curriculum and serves to teach teen parents life skills through the prism of civic education. The intensive program takes place over a number of weeks and covers topics such as landlord-tenant law, consumer protection, child custody, child abuse and neglect, domestic violence, voter registration, and state mandatory education requirements. The program is designed to teach teen parents the skills to be effective parents and self-advocates. In April 2005, the Administrative Office of the Courts held a 'train the trainers' program on the TPAL curriculum for Family Court staff members. Ten Family Courts were supplied curriculum materials and are either implementing the program or are in the planning stages of implementation.<sup>6</sup>

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<sup>6</sup> <http://www.abanet.org/abanet/child/statesum/allstate.cfm?y=2005>



### **Transitional or Independent Living Programs**

Transition Planning Program Manager Iowa Department of Human Services  
Hoover State Office Building Des Moines, IA 50319-0114  
Phone: (515) 281-6786  
Fax: (515) 281-4597

### **Davenport Schools – Home Instruction Office, Teen Academic Parenting Program**

1002 W. Kimberly Rd. Davenport, IA 52806  
Phone: (563) 319-9161

### **Hillcrest Family Services**

2005 Asbury Road Dubuque, IA 52001  
Toll free: (877) 437-6333  
Phone: (563) 583-7357  
Fax: (563) 583-7026

Capacity: 21 adults and 81 adolescents; adoption services; foster care, single parent counseling; individual, family and marriage counseling; chemical dependency counseling; family planning services; WIC nutrition program; in-home shelter and detention services Hillcrest Family Services also has a branch office in Cedar Rapids, IA  
Connectional Unit: Iowa Conference.

### **Mid-Iowa Community Action, Inc.**

1001 S. 18th Avenue, Marshalltown, Iowa 50158 I  
Phone: (641) 752-7162

MICA's services to low-income families are initiated primarily through our Family Development Centers in our five core counties of Hardin, Marshall, Poweshiek, Story, and Tama. Family Development Centers are located in Ames, Grinnell, Iowa Falls, Marshalltown, and Tama. In addition, MICA helps low-income families in another 28 Iowa counties, either through direct services or by contracting with other agencies.

### **United Action for Youth**

Main Office: located at 410 Iowa Avenue  
Phone: 319.338.7518  
Youth Center: located at 355 Iowa Avenue  
Phone: 319.358.9406  
Mailing address:  
P.O. Box 892 Iowa City, Iowa 52244

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Also read 1-page online background paper by the [Coalition for Family and Children's Services in Iowa](http://www.iachild.org/pages/shelter.pdf) on the growing use of shelters for kids who need better placements. <http://www.iachild.org/pages/shelter.pdf>

### **Mother-baby Residential Facilities**

#### **Heartland Pregnancy Center**

101 S Market St, Ste 302 Ottumwa, Iowa  
Phone: 641-683-3030

#### **Ruth Harbor**

534 42nd Street Des Moines, IA 50312 USA  
Tel: (515) 279-4661  
Toll Free: (866) 900-4661  
Email: [info@RuthHarbor.org](mailto:info@RuthHarbor.org)  
Fax: (515) 633-2157

A 6-8 resident home located in Des Moines providing young women who are alone and facing unplanned pregnancies a truly viable option -- a safe harbor -- by providing housing, education, counseling, health care, parenting training or adoption assistance, spiritual support and more for the duration of their pregnancies.

### **Substance Abuse Health & Treatment Resources**

#### **Mid-Iowa Community Action, Inc.**

1001 S. 18th Avenue, Marshalltown, Iowa 50158 I  
Phone: (641) 752-7162

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Mailing address: P.O. Box 892 Iowa City, Iowa 52244

### Childcare Assistance

#### **Crittenton Center**

303 West 24<sup>th</sup> St. Sioux City, IA 51104

Phone: (712) 255-4321

[www.crittentoncenter.org](http://www.crittentoncenter.org)

#### **Mid-Iowa Community Action, Inc.**

1001 S. 18th Avenue, Marshalltown, Iowa 50158

Phone: (641) 752-7162

MICA's services to low-income families are initiated primarily through our Family Development Centers in our five core counties of Hardin, Marshall, Poweshiek, Story, and Tama. Family Development Centers are located in Ames, Grinnell, Iowa Falls, Marshalltown, and Tama. In addition, MICA helps low-income families in another 28 Iowa counties, either through direct services or by contracting with other agencies.

The Iowa City area has more than 50 licensed child care facilities, including public or private, secular or spiritual, and large or small. Fees may be free for income-eligible families. Many daycare centers accept subsidies for low-income families and some, such as Home Ties and the Johnson County Neighbor Centers, provide aid to specific populations, including teen parents and families coming off welfare. Before- and-after-school care for school-aged children is available at Iowa City grade schools as well as many daycare centers. In addition, University of Iowa employees can take advantage of discounted fees available only to them. For more information about finding childcare, call Johnson County Department of Human Services: 356-6050; or 4Cs of Johnson, a childcare referral service, at 338-7684.

For a convenient online directory of facilities go directly to <http://www.press-citizen.com/apps/pbcs.dll/article?AID=/99999999/NEWCOMER/80228006>

### **TANF (Temporary Aid to Needy Families) Funds**

Iowa's TANF is known as the *FIP (Family Investment Program)*

Employment & Training Programs

Iowa Department of Human Services

Hoover State Office Building Des Moines, IA 50319

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Phone: (515) 281-6080  
FAX: (515) 281-7791

### **TANF/AFS (Adult and Family Services) or other**

TANF is time-limited public assistance payments made to poor families, based on Title IV-A of the Social Security Act. The program provides parents with job preparation, work, and support services to help them become self-sufficient.

TANF legislation includes two rules specific to minor parents (parents under age 18). One rule requires that minor parents live in an approved arrangement, usually with their parents. The other rule requires that minor parents typically participate in education leading to a high school diploma or GED.

The living arrangement requirement to receive TANF says that a state is prohibited from spending federal TANF funds on assistance to an unmarried, minor, custodial parent unless she lives with a parent, legal guardian or other adult relative or is approved for an exception. The law recognizes limited exceptions to this rule including situations in which a parent, legal guardian, or other adult relative is not available or when such a placement could result in harm to the minor parent and/or her child. When residing with a parent, legal guardian or other adult relative is inappropriate, the state must "provide, or assist the individual in locating, a second chance home, maternity home, or other appropriate adult-supervised setting." Alternatively, the state may determine that a teen parent's independent living arrangement is appropriate and that it is in the "best interest" of her child to make an exception to the general rule.<sup>7</sup> See Also I.C.A. § 239B.10 (Minor and young parents--other requirements).

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<sup>7</sup> <http://www.spdp.org/reprexpl.htm#mla>